

ORG. FILE 8-3-Webb
CARRIER FILE R-14881
NRAB FILE CL-10066

AWARD NO. 29
CASE NO. 29

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES The Brotherhood of Railway and Steamship Clerks,
TO Freight Handlers, Express and Station Employees
DISPUTE St. Louis, San Francisco and Texas Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on or about June 21, 1955, it suspended H. T. Webb, Breaker at Ft. Worth, Texas, from service without cause and without investigation, and further, refused to grant him leave of absence account physical disability after he was reinstated October 31, 1956.

(2) Mr. H. T. Webb shall now be compensated at the rate of the Breaker position at Ft. Worth, Texas, for all time lost January 15, 1956, to August 24, 1956, except May 7 to June 17, 1956, when he was not available due to illness.

(3) Mr. Webb now be continued in service on leave of absence account physical disability.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

Claimant's regular assignment of freight handler was abolished January 12, 1955, and he was reduced to the extra list. He performed extra work during January and February. On March 1, 1955, he was granted a 10 day vacation followed

On March 1, 1955, he took employment with General Motors where he worked until he sustained a lower back injury on April 20, 1956, for which he underwent surgery in September 1956.

On June 21, 1955, the Carrier suspended him for failure to protect extra work and failure to file name and address pursuant to Rule 21 (b) and offered him an investigation which he requested on July 4, 1955. No investigation was held, however, until the following year on July 31, 1956.

Meanwhile Claimant's name was dropped from the 1956 seniority roster as a result of which he filed a time claim on March 15, 1956, retroactive to January 15, 1956, for each day his job worked "due to not being called to work in line with Rule 21 (c)." This time claim was denied and is now here as Item 2 of the claim.

As a result of the investigation held on July 31, 1956, Claimant was reinstated effective October 31, 1956, and ordered to report for duty November 5, 1956. The Carrier's Superintendent wrote the Organization's General Chairman on November 2, 1956, advising of the reinstatement and saying:

"While I am personally of the opinion this man is not entitled to any payment and due to the fact we have been unable to arrive at an agreement in that respect, I am, as outlined above, reinstating Webb without prejudice to your right and privilege of giving the case further handling, if desired, under applicable agreement rules."

On November 1, 1956, Claimant requested leave of absence to November 23, 1956, accompanying the request with a medical certificate that he had not convalesced sufficiently from surgery. The Carrier replied on November 19, 1956, that leave of absence would not be necessary if Claimant returned to work prior to expiration of 29 days after November 5 (December 4) and requested "please advise exact date you intend to return to work."

Claimant did not return to work on December 4, 1956, nor was any response made to the Carrier's letter of November 19, 1956, until January 12, 1957, when the Organization requested a leave of absence to December 10, 1957, account physical condition. The Carrier did not grant this request.

On April 16, 1957, the Carrier notified Claimant to report for investigation on April 23, 1957, on a charge of "absenting yourself for more than 30 days without proper leave of absence."

Claimant failed to report at this investigation and, as a result of the investigation, he was dismissed from service. The propriety of this dismissal is now here as Item 3 of the claim.

There are two aspects to this claim: first, a claim that the Carrier improperly suspended Claimant from service on June 21, 1955 without cause and without investigation on account of which Item 2 of the claim seeks compensation for time lost; and second, a claim that the Carrier improperly refused to grant Claimant leave of absence account physical disability after he was reinstated October 31, 1956, and improperly dismissed him from service May 1, 1957, on account of which Item 3 of the claim seeks his continuance in service on leave of absence account physical disability.

First. This is not a discipline case. Claimant either maintained his seniority rights or took himself out of service, depending upon whether he complied with the requirements of the Agreement concerning the protection of extra work.

Except as otherwise limited by the Agreement, it is the sole responsibility of the Carrier to administer the seniority provisions of the Agreement. Consistently with its obligations as administrator of the seniority provisions of the Agreement, the Carrier could not waive or condone Claimant's non-compliance with Rule 21 (b) or Rule 34 (b), on a leniency basis as in discipline cases, because in a seniority case the seniority rights of all other employes on the roster would be affected.

Since this was a seniority question, and not a discipline case, the Carrier was under obligation to consider Claimant out of service without holding an investigation, if in fact he had not filed his name and address pursuant to Rule 21 (b) or if he had accepted outside employment, while on leave of absence, without agreement between Management and the General Chairman pursuant to Rule 34 (b).

If the fact of non-compliance is disputed, the Carrier's action can be challenged by time claim or by request for investigation under Rule 32 on account of "unjust treatment" other than the imposition of discipline.

In a discipline case, there are two distinct and separate questions: (1) the propriety of any disciplinary action and (2) the propriety of the amount of discipline to be assessed. Settlement of the first question does not conclude the second question.

In a seniority case, on the other hand, reinstatement and pay for time lost are interdependent and inseparable. Reinstatement is proper if Claimant protected his rights; and if he did, he has a right to pay for time lost. Rein- statement on a leniency basis or by reason of extenuating circumstances violates the seniority rights of all other employes on the roster.

In this view the reinstatement established the continuance of Claimant's seniority rights which entitled him to pay for time lost (if any), less any amounts earned in other employment. He was apparently gainfully employed otherwise for which deduction should be made. It is established that he was not available to work his position with the Carrier after he was injured on April 20, 1956.

Second. By the same token the dismissal based upon the investigation held on April 23, 1957, which Claimant failed to attend, was a decision that Claimant was "out of service" within the meaning of Rule 34 (b).

It stands admitted that Claimant failed to report for duty at the expiration of his leave of absence on December 4, 1956. Whether his failure to report on time was the result of "unavoidable delay" was a question which he could have raised by way of defense at the investigation. By not appearing at the investigation he confessed the validity of the charge.

AWARD

Item (1) of the claim disposed of in accordance with the foregoing findings; Item (2) sustained for the period beginning January 15, 1956, and ending April 20, 1956, less earnings in other employment; Item (3) denied.

/s/ Hubert Wyckoff
Chairman

/s/ T.P. Deaton
Carrier Member

/s/ F. H. Wright
Employe Member

Dated at St. Louis, Missouri, June 25, 1959.